IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/06/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

H.C.P.No.645 of 2004

M.Shanmugam .. Petitioner

-Vs-

1. Maheswaran

2. The Inspector of Police
Kaveripattinam Police Station
Krishnagiri District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to direct the respondents to produce the detenue, Swarnamigai, daughter of Devan and set her at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.V.Raghavachari
for 1st respondent
Mr.Abudukumar Rajarathnam
Addl Public Prosecutor
for 2nd respondent

:ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner claims himself to be the husband of one Swarnambigai (hereinafter referred to as the "detenue"), who is said to have been detained by the first respondent, who is nonetheless the brother of the detenue, objecting the alleged marriage said to have taken place between the petitioner and the detenue on 14.4.2004 at Sri Aarunneswar and Sri Laksmi Narayana Devasthanam, Karimangalam, Palacode Taluk, Dharmapuri District.

2. Pursuant to the notice issued in this petition, the detenue was produced before us and we personally examined the detenue in the presence of the petitioner as well as first respondent.

3. The petitioner as well as the detenue are Post Graduates, having completed Master of Science in Mathematics. It is not in dispute that the detenue is a major. The detenue is able to understand the pros and cons of her choice to live with the petitioner. It is a common case of the petitioner and the detenue that they married on 14.4.2004 at Sri Aarunneswar and Sri Laksmi Narayana Devasthanam, Karimangalam, Palacode Taluk, Dharmapuri District in the presence of the elders by exchanging garlands, as also stated in the affidavit filed by the petitioner in support of this petition.

4. The detenue states that she decided to marry the petitioner on her own volition and also spent two days with him. The detenue also expressed her desire to go along with the petitioner on her own volition and to live with him.

5. Even though the petitioner is likely to get employed shortly, since he is an unemployee as on date, he volunteered himself to convey his share in the three acres of wet land, which is a joint family property, as a security to the detenue for her future life.

6. In view of the clear stand taken by the detenue, the first respondent, the brother of the detenue, as well as her relatives who appeared before this Court today (16.6.2004), expressed that they are not interested to pursue the matter any more or to compel the detenue to come with them. The first respondent as well as the relatives assured that they shall not in any manner whatsoever harass the detenue or the petitioner.

7. At this point of time, the learned Additional Public Prosecutor appearing for the second respondent, as well as the learned counsel for first respondent raised a serious doubt as to the marriage alleged to have taken place on 14.4.2004 at Sri Aarunneswar and Sri Laksmi Narayana Devasthanam, Karimangalam, Palacode Taluk, Dharmapuri District, as the same has not yet been registered and expressed their apprehension that the detenue would be deserted by the petitioner.

8. It is trite law that a writ of habeas corpus at the instance of a man to obtain possession of a woman alleged to be his wife does not issue as a matter of course. Though a writ of right, it is not a writ of course especially when a man seeks the assistance of the Court to regain the custody of a woman. Before a Court accedes to this request it must satisfy itself at least prima facie that the person claiming the writ is in fact the husband and further whether valid marriage between him and woman could at all have taken place, vide Mohd. Ikram Hussain v. State of U.P.,(1964) 5 SCR 86.

Under such circumstances, particularly because of the undisputed fact that the detenue is a major and appears to have taken the decision on her own volition and in sound mind, we are of the considered opinion that she is at liberty to decide her future in her own accord. Recording the undertaking of the petitioner to convey his share in the three acres of land, which is a joint family property, as a security to the detenue for her future life; and

also to get their marriage registered statutorily, at the earliest possible, in any event within fifteen days from today, this petition is ordered accordingly.

To:
1. The Public Prosecutor
High Court, Madras.

2. The Inspector of Police
Kaveripattinam Police Station
Krishnagiri District.

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